IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/08/2003

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.296 of 1995

Moorthy .. Appellant

-Vs-

State by Inspector of Police
Law & Order
Tirukkalikundrum Circle .. Respondent

This criminal appeal is preferred under Sec.374 (2) of The Code of Criminal Procedure against the judgment of the Sessions Judge, Chengalpattu in S.C.No.84/1993, dated 25.1.1995.

!For Appellant : Mr.K.Veeraraghavan

^For Respondent : Mr.S.Jayakumar
Additional Public Prosecutor

:JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)
The sole accused who stood charged, tried and found guilty under Sec.302 of I.P.C. (2 counts) and sentenced to life imprisonment each has brought forth this appeal.
2. The brief facts necessary for the disposal of this appeal can be stated thus:
(a) P.W.1 Subbarayan, a Village Administrative Officer of Mamallapuram, on information from his Thalayari, went to the seashore temple and found the dead body of a male child namely Veeramani aged 4 or 5 years. He proceeded to Mamallapuram Police Station and gave a complaint. On the strength of the complaint Ex.P1, P.W.16 Manokaran, Sub Inspector of Police, registered a case in Crime No.694/92 under Sec.302 of I.P.C.. Ex.P27 printed F.I.R. was despatched to the concerned Judicial Magistrate's Court. P.W.17 Ranganathan, Inspector of Police, on receipt of the copy of the F.I.R. took up the investigation, proceeded to the site, where the dead body was found, at 7.00 A.M. on 16.9.1992. He made an observation in the presence of two witnesses and prepared Ex.P28 mahazar and Ex.P29 rough sketch. The site of occurrence was caused to be photographed, and Ex.P12 (series) is the photographs with negatives. The Investigating Officer conducted the inquest

in the presence of the witnesses and prepared Ex.P30 inquest report. He examined the witnesses and panchayatars at the time of inquest. Through P.W.14 Elumalai, a constable, he sent the dead body of Veeramani along with Ex.P14 requisition for the purpose of conducting autopsy on the dead body of the child.
(b) P.W.15 Dr.Vadivelu, a Professor of Forensic Medicine, Chengalpattu Medical College, Chengalpattu, conducted the autopsy on the dead body of the male child and found the following injuries.

Injuries:
1) Cut injury horizontal seen on the front of neck 4 x 2 x 1 cms, cutting the skin, muscles, blood vessels (Jugular veins). Irachea slightly injured and contained portion of food materials (Aspirated).
2) Old scar 1 cm in diameter seen on the front of right knee, partly healed.
3) Partly healed wound seen on the front of Right ankle (leg) 1 cms in diameter.
The Doctor has issued Ex.P24, the post mortem certificate, and has opined that the deceased would appear to have died of shock and haemorrhage due to cut injury on the neck.
(c) On 17.9.1992, P.W.1, V.A.O., got information that a dead body of a female child by name Lalitha was found near Karukkathamman Temple situated on the Mamallapuram Tirukkalikundram Road, and he proceeded to the spot and found the dead body. Thereafter, he went to Mamallapuram Police Station and gave a complaint under Ex.P3. P.W.16, the Sub Inspector, on the strength of Ex.P3 registered a case in Crime No.6 95/92 under Sec.302 of I.P.C. Ex.P28 the printed F.I.R. was despatched to the concerned Judicial Magistrate's Court. On receipt of the copy of the F.I.R., P.W.17, the Inspector, took up the investigation, proceeded to the spot at about 11.00 A.M., made an observation of the site and prepared Ex.P4 mahazar and Ex.P31 rough sketch. From the site, he recovered M.Os.1 to 5 under a cover of Ex.P5 mahazar. The dead body of female child was photographed. Ex.P13 (series) is the photographs with negatives. On the dead body of the said female child, the Investigating Officer conducted an inquest between 2.00 P.M. and 3.00 P.M. and prepared Ex.P32 inquest report. He examined the witnesses and panchayatars at the time of inquest. An intimation was given to the Forensic Science Department, and P.W.12 Mohan, a Scientific Assistant, came to the spot and collected M.Os.1 to 5. The dead body of the female child was sent through P.W.13 Kuppusamy, a Constable, for the purpose of postmortem.
(d) P.W.15, the Doctor, on receipt of the requisition conducted the autopsy on the dead body of the female child on the morning of 17.9.1 992 and found the following injuries.
Injuries:
1) Lacerated wound 8 x 8 cm bone deep on the left side of scalp near vertex.
2) Lacerated wound on the left side back of scalp and lt. side temporal region exposing bone 11 x 3 x 3 cm exposing depressed comminuted fracture of the left side skull; Brain exposed.
3) Lacerated wound 12 x 8 x 2 cm on the Lt. side face exposing lt. side jaw and upper side of the face. Left ear torn and disfigured. Plenty of maggots seen crawling.
4) Lacerated wound 11 x 9 cm bone deep on the Rt. side temporal region involving the Rt. side face and Rt. ear. Linear crack fracture seen on Rt.

side skull.
5) Upper central four incisors and Lower central three incisors found broken.
6) On reflecting the scalp, contusion seen on the frontal region of the scalp.
The Doctor has issued Ex.P26, the postmortem certificate, and has opined that the deceased would appear to have died of head injuries sustained by her.
(e) The Investigating Officer took up further investigation and examined P.Ws.2, 3 and 4 at the Government Hospital, Chengalpattu on 24.9.1992, when they identified the dead bodies of the children. He examined P.W.6 Ekambaram, who was running a petty shop on the relevant date at Mamallapuram. P.W.6 has stated that the accused took both the children to his shop; that he purchased Rasna from his shop and gave to the children; that apart from that, he also purchased a blade in his shop; that he took the children towards Beach; that sometime thereafter, he returned only with the female child; and that the children were found with tonsure heads. The accused was arrested at 12.00 Noon on 29.9.1992, when he made a confessional statement voluntarily in the presence of P.W.4 Ponnusamy and Danabal. The Investigating Officer recorded the same, and the admissible portion of the confessional statement is marked as Ex.P33. Pursuant to the confessional statement, the accused took the Investigating Officer to his house and produced M.Os.8 to 11, which were recovered under a cover of Ex.P34 mahazar. He examined the other witnesses and recorded their statements. He proceeded to Madras and examined the witnesses and recorded their statements. The accused was remanded to judicial custody. All the material objects seized and recovered at the time of investigation, were sent to the Judicial Magistrate's Court along with a requisition for analysis. Accordingly the material objects were sent to Forensic Science Department for analysis, and the reports of the Chemical Analyst and Serologist were marked as Exs.P17 to P20.
(f) The Investigating Officer placed Ex.P11 requisition before the Chief Judicial Magistrate, Chengalpattu for recording the statements of the witnesses P.Ws.1 to 5 under Sec.164 of Cr.P.C. As per the orders of the Chief Judicial Magistrate, P.W.10 Tmt.Tharani, Judicial Magistrate, recorded the statement of P.Ws.2 to 7 under Sec.164 of Cr.P.C. The statement of P.W.2, the wife of the appellant/accused, is marked as Ex.P6. The Investigating Officer examined all other witnesses and on completion of the investigation, filed the final report under Sec.302 of I.P.C. against the accused.
3. In order to prove the charges levelled against the appellant/accused, the prosecution marched 17 witnesses and marked 34 exhibits and 13 material objects. On completion of the evidence of the prosecution, the accused was questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which he flatly denied as false. No defence was examined. No exhibits or material objects were marked. On consideration of the rival submissions and scrutiny of the materials available, the learned Sessions Judge found him guilty as per the charges and sentenced to undergo life imprisonment each. Hence, this appeal.
4. Arguing for the appellant, the learned Counsel with vigour and vehemence made the following submissions for consideration of this Court:
In the instant case, the prosecution has relied only on the circumstantial evidence, and no direct evidence was available. But, the prosecution has not even proved one circumstance pointing to the guilt of the accused. The prosecution has relied on the evidence of P.Ws.2, 4, 6 and 7,

but all of them have turned hostile. It is true that the statements of those witnesses including P.W.2, the wife of the appellant were recorded under Sec.164 of Cr.P.C. But, P.W.2, the main witness, has thoroughly retracted from her earlier version and has not whispered even a word connecting the accused. It is well settled position of law that the retracted confession cannot be relied upon for any purpose. But, surprisingly the lower Court has stated that the statement subsequently retracted was available to the prosecution partly. The lower Court has given unnecessary weight and reliance on the evidence of P.W.5, a shop keeper at Mamallapuram, who has stated that the accused came with the children to his shop about one and half years back. It is highly improbable and unbelievable that P.W.5 could remember the accused when hundreds of people are visiting a tourism place like Mahabalipuram everyday. No identification parade was conducted to identify the appellant by the said witness. Thus, there was thorough lack of legal evidence in the case. Without proper appreciation of the facts and circumstances and with lack of evidence, the trial Court has found the accused guilty, and hence, he is entitled for an acquittal.

5. The learned Additional Public Prosecutor opposing strongly the above contentions would submit that it is true that the prosecution relied on the circumstantial evidence, but all circumstances relied on by the prosecution have been thoroughly proved; that the lower Court only on appreciation of the circumstances has found him guilty, and hence, there is no merit in the appeal, and the same has got to be dismissed.

6. As could be seen above, in the instant case, the accused stood charged of murdering his two children. The fact that both the children namely Veeramani aged 4 years and Lalitha aged 7 years met their death due to homicidal violence is not disputed by the appellant/ accused. That apart, in order to prove the same, the prosecution has relied on the evidence of P.W.15, the Postmortem Doctor and Exs.P24 and P26 , the postmortem certificates issued by him. P.W.15, the Doctor, has opined that the girl Lalitha would have died of head injuries; and that the boy Veeramani would have died of shock and haemorrhage due to cut injury on the neck. In view of the same, it can be sufficiently held that both the children died due to homicidal violence.

7. True it is that no direct evidence was available in the case, and the prosecution has rested its case solely on the circumstantial evidence. A careful scrutiny of he evidence and the available materials would lead to the irresistible conclusion that the prosecution has proved the charges by placing complete chain of circumstances. Concededly, the appellant/accused and his wife P.W.2 along with the children Veeramani and Lalitha were residing in Adavampakkam Village, and both the children were put in education in a School situated near to their residence. According to the prosecution, the occurrence has taken place on 15.9.92. P.W.2 whose statement was recorded under Sec.164 of Cr.P.C. by P.W.10, the Judicial Magistrate, has retracted the same at the time of evidence. But, her evidence was available to the prosecution to the extent that both the children went to the School on the morning of 15.9.1992. Both P.Ws.8 and 9, the Teachers of the said educational institution, through whom Exs.P9 and P10 attendance registers were marked, have deposed that both the children did not attend the School on 15.9.1992. It is not in dispute that both the children, who went to the School that morning, did not return till night. The first circumstance that would go against the appellant/accused as a responsible father, was that he did not

even attempt to search for the children on all the future days also. P.W.2 along with others has identified the dead bodies in the Government Hospital, Chengalpattu on 24.9.1992 to the Investigating Officer pending investigation.

8. P.W.5, a petty shop owner, has deposed that he was conducting a petty shop at Mamallapuram; that one day when his business was not busy, he was sitting outside the shop; that at that time, the accused brought a female child and a male child, purchased Rasna and gave to the children; that he also purchased a blade and took both the children towards beach side; and that sometime thereafter, he returned only with the female child. He has identified the accused before the trial Court. The contention of the appellant's side that no identification parade was conducted, and it is highly improbable for a person like P.W.5, a shop keeper, to identify, and hence, his evidence is highly unbelievable has to be discountenanced for the reasons that P.W.5 has categorically deposed that at that time, the appellant/accused brought both the children; that his business was not busy that day; that he was sitting outside the shop; that both the children were found with tonsure heads; that the accused purchased Rasna and gave to the children; and apart from that, he purchased a blade also. Hence, it would not be difficult for P.W.5 to remember the identity of the accused.

9. Yet another strong circumstance against the appellant/accused was the recovery of M.Os.8 to 9 clothes and M.O.11 blade, which were seized from the accused by the Investigating Officer pursuant to the confession made voluntarily by the accused at the time of his arrest in the presence of P.W.4 Ponnusamy and another. The said material objects were subjected to chemical analysis, and Chemical Analyst's report and Serologist's report were received. Through the scientific evidence it was proved that M.Os.6 and 8 were found to contain human blood. From 16.9.92 till his arrest on 29.9.92, the appellant/accused was absconding. Ordinarily, the abscondance of an accused cannot be taken as a circumstance pointing to the guilt of the accused. But, in the instant case, it remains to be stated that the appellant/accused was the father of both the children murdered. He has no explanation to tender why he did not take any steps to trace the children, when they did not return from the School on the evening of 15.9.92. But, from the evidence of P.Ws.8 and 9 the School Teachers, it would be clear that they even did not attend the School that day. The murder of the male child has taken place on the beach side of Mamallapuram, while the murder of the female child has taken place on the road side near a temple at Mamallapuram Tirukkalikundram Road. From the evidence of P.W.5, who has clearly identified the accused, it would be quite clear that the appellant/accused has purchased a blade from his shop and the broken blades have also been recovered marked as M.O.11 pursuant to the confession made by him.

10. According to the Postmortem Doctor, the male child died due to shock and haemorrhage and profused bleeding. The Doctor has also added that the death of the female child was caused by the fracture on the skull, and the same could be caused by 9.50 kilos stone found with bloodstains recovered from near the dead body. The said stone was also subjected to chemical test and found with human blood. In view of all the totality of the circumstances, the Court is of the considered view that all the above circumstances would clearly adumbrate that no one except the appellant/accused would have committed the murder of both the children. Taking into consideration that the appellant/ accused was the father of both the children of tender age, the act of the

accused was one merciless and of utmost cruelty and brutality, and thus, the lower Court was perfectly correct in finding him guilty under Sec.302 of I.P.C. (2 counts) and awarding life imprisonment each. The Court is unable to see any merit in this appeal.

11. In the result, this criminal appeal is dismissed, confirming the judgment of the lower Court. The Sessions Judge shall take steps to commit the accused to prison, if he is on bail, to undergo the remaining period of sentence.

Index: Yes
Internet: Yes

To:

1) The Principal Sessions Judge, Chengalpattu.
2) The Judicial Magistrate, Thirukazhikundram.
3) The Judicial Magistrate, Thirukazhikundram,
Thro' The Chief Judicial Magistrate, Chengalpattu.
4) The District Collector, Chengalpattu.
5) The D.G.P., Chennai.
6) The Superintendent, Central Prison, Vellore.
7) The Public Prosecutor, High Court, Madras.
8) The Inspector of Police (L & O), Madras.

nsv/